



January 30, 2004

SENATE BILL No. 154

DIGEST OF SB 154 (Updated January 28, 2004 1:01 pm - DI 106)

Citations Affected: IC 9-30; IC 35-50; noncode.

Synopsis: Operating a vehicle while intoxicated. Makes the offense of operating a motor vehicle while intoxicated as a Class A misdemeanor or a Class D felony if: (1) at least one passenger is less than 18 years of age; and (2) the driver is at least 21 years of age. Prevents persons who have been convicted of certain offenses involving operating a motor vehicle while intoxicated from obtaining a probationary license. Increases or establishes mandatory jail time for persons convicted of committing certain offenses involving operating a motor vehicle while intoxicated. Provides that certain persons convicted of OWI must receive assessments for alcohol and drug abuse. Requires a person convicted of OWI causing death to receive a nonsuspendible sentence if the person had a controlled substance in the blood, or a BAC greater than .15%.

Effective: July 1, 2004.

Young R Michael, Broden, Howard

January 6, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

January 29, 2004, amended, reported favorably — Do Pass.

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SB 154—LS 6361/DI 69+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

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SENATE BILL No. 154

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 9-30-5-3, AS AMENDED BY P.L.291-2001,
2 SECTION 222, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: Sec. 3. A person who violates section 1
4 or 2 of this chapter commits a Class D felony if:
5 (1) the person has a previous conviction of operating while
6 intoxicated ~~and~~
7 (2) ~~the previous conviction of operating while intoxicated that~~
8 occurred within the five (5) years immediately preceding the
9 occurrence of the violation of section 1 or 2 of this chapter; ~~or~~
10 (2) **the person:**
11 (A) **is at least twenty-one (21) years of age;**
12 (B) **violates section 1(b) or 2(b) of this chapter; and**
13 (C) **operated a vehicle in which at least one (1) passenger**
14 **was less than eighteen (18) years of age.**
15 SECTION 2. IC 9-30-5-10 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a
17 criminal penalty imposed for an offense under this chapter or

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IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section.

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. ~~The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(e) If the conviction under consideration by the court is for an offense under section 1(b) of this chapter, the court shall recommend the suspension of the person's driving privileges for at

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least one hundred eighty (180) days but not more than two (2) years.

(f) If:

- (1) the conviction under consideration by the court is for an offense under section 1(a), 1(c), or 2(a) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(g) If:

- (1) the conviction under consideration by the court is for an offense under section (1)(b) or 2(b) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years.

(h) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

⊕ (i) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 3. IC 9-30-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) If:

- (1) a court recommends suspension of a person's driving privileges under section 10(b) of this chapter for an offense committed under this chapter; and
- (2) the person did not refuse to submit to a chemical test offered under IC 9-30-6-2 during the investigation of the offense;

the court may stay the execution of the suspension of the person's

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driving privileges and grant the person probationary driving privileges for one hundred eighty (180) days.

(b) An order for probationary privileges must be issued in accordance with sections 11 and 13 of this chapter.

(c) If:

(1) a court recommends suspension of a person's driving privileges under section 10(c) ~~10(d)~~, or ~~10(e)~~, **10(h)** of this chapter for an offense committed under this chapter; and

(2) the period of suspension recommended by the court exceeds the minimum permissible fixed period of suspension specified under section 10 of this chapter;

the court may stay the execution of that part of the suspension that exceeds the minimum fixed period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) In addition to the other requirements of this section, if a person's driving privileges are suspended or revoked under section ~~10(f)~~ **10(i)** of this chapter, a court must find that compelling circumstances warrant the issuance of probationary driving privileges.

(e) Before a court may grant probationary driving privileges under this section, the person to whom the probationary driving privileges will be granted must meet the burden of proving eligibility to receive probationary driving privileges.

SECTION 4. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days; ~~or~~
and

(B) **that** the person ~~to~~ perform at least thirty (30) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

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1 (A) that the person be imprisoned for at least ~~ten (10)~~ **thirty**
2 **(30)** days; or
3 (B) the person to perform at least sixty (60) days of community
4 restitution or service; and
5 (2) order the person to receive an assessment of the person's
6 degree of alcohol and drug abuse and, if appropriate, to
7 successfully complete an alcohol or drug ~~abuse treatment~~
8 program; ~~including an alcohol deterrent program if the person~~
9 ~~suffers from alcohol abuse;~~
10 if the person has at least two (2) previous convictions of operating
11 while intoxicated.
12 **(c) In addition to any criminal penalty imposed for an offense**
13 **under this chapter, the court shall:**
14 **(1) order that the person be imprisoned for at least three (3)**
15 **days; and**
16 **(2) order the person to:**
17 **(A) receive an assessment of the person's degree of alcohol**
18 **and drug abuse; and**
19 **(B) if appropriate, successfully complete an alcohol or drug**
20 **program;**
21 **if the person is convicted of an offense under section 1(b) of this**
22 **chapter.**
23 **(d) In addition to any criminal penalty imposed for an offense**
24 **under this chapter, the court shall:**
25 **(1) order that the person be imprisoned for at least three (3)**
26 **days; and**
27 **(2) order the person to:**
28 **(A) receive an assessment of the person's degree of alcohol**
29 **and drug abuse; and**
30 **(B) if appropriate, successfully complete an alcohol or drug**
31 **program;**
32 **if the person is at least twenty-one (21) years of age and is**
33 **convicted of an offense under section 1(a), 1(c), or 2 of this chapter**
34 **in which at least one (1) passenger was less than eighteen (18) years**
35 **of age.**
36 **(e) In addition to any criminal penalty imposed for an offense**
37 **under this chapter, the court shall order the person to:**
38 **(1) receive an assessment of the person's degree of alcohol and**
39 **drug abuse; and**
40 **(2) if appropriate, successfully complete an alcohol or drug**
41 **program;**
42 **if the person is convicted of an offense under section 4 or 5 of this**

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chapter.

(f) An assessment for alcohol and drug abuse required under this section must be conducted by:

- (1) a court established alcohol and drug services program certified under IC 12-23-14;
- (2) a circuit court alcohol abuse deterrent program established under IC 9-30-9; or
- (3) a drug court certified under IC 12-23-14.5.

In a county that does not have a program described in subdivision (1), (2), or (3), the assessment must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

(g) A court ordering a person to complete an alcohol or drug program under this section must determine that the program is:

- (1) certified under IC 12-23-14 or IC 12-23-14.5; or
- (2) authorized under IC 9-30-9.

In a county that does not have a program described in subdivision (1) or (2), the program must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

~~(e)~~ (h) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

- (1) at least forty-eight (48) hours of the sentence must be served consecutively; and
- (2) ~~the entire sentence a term of:~~
 - (A) imprisonment;
 - (B) community restitution or service; or
 - (C) both imprisonment and community restitution or service;

imposed under this section must be served within six (6) months after the date of sentencing.

~~(d)~~ (i) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section.

SECTION 5. IC 9-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be

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suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2)**, ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has at least two (2) violations under section 4(a)(4) through 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter.

SECTION 6. IC 35-50-2-2, AS AMENDED BY P.L.224-2003, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.5:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

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- (4) The felony committed was:
- (A) murder (IC 35-42-1-1);
 - (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
 - (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
 - (D) kidnapping (IC 35-42-3-2);
 - (E) confinement (IC 35-42-3-3) with a deadly weapon;
 - (F) rape (IC 35-42-4-1) as a Class A felony;
 - (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
 - (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
 - (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
 - (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
 - (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
 - (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
 - (M) escape (IC 35-44-3-5) with a deadly weapon;
 - (N) rioting (IC 35-45-1-2) with a deadly weapon;
 - (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
 - (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;

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(iii) a family housing complex; or

(iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or

(R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

(i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or

(ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 7. [EFFECTIVE JULY 1, 2004] (a) IC 9-30-5-3, as amended by this act, applies only to offenses committed after June 30, 2004.

(b) IC 9-30-5-10, IC 9-30-5-15, IC 9-30-10-5, and IC 35-50-2-2, all as amended by this act, apply only if the last offense was committed after June 30, 2004.

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SENATE MOTION

Madam President: I move that Senator Howard be added as coauthor of Senate Bill 154.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senator Broden be added as second author of Senate Bill 154.

YOUNG R MICHAEL

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 154, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 5, delete "2" and insert **"2(a)"**.

Page 3, line 15, after "(1)(b)" insert **"or 2(b)"**.

Page 3, line 16, after "person" insert **"was at least twenty-one (21) years of age and"**.

Page 3, line 29, delete "Subject to this section, if" and insert "If".

Page 5, line 41, after "section" insert **"4 or"**.

Page 6, line 27, delete "except as provided in subsection (e),".

Page 6, line 27, strike "the entire sentence" and insert **"a term of:**

(A) imprisonment;

(B) community restitution or service; or

(C) both imprisonment and community restitution or service;".

Page 6, line 28, before "must" insert **"imposed under this section"**.

Page 9, line 2, delete "death);" and insert **"death) if the person had:**

(i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or

(ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;".

and when so amended that said bill do pass.

(Reference is to SB 154 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 0.

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